

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Edward Tsigel	Team: Squad #16	CCRB Case #: 202107082	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 11/03/2021 6:30 PM, Thursday, 11/04/2021 8:00 PM	Location of Incident: § 87(2)(b) and Roll N Roaster (2901 Emmons Avenue, in Brooklyn)	18 Mo. SOL 5/3/2023	Precinct: 123		
Date/Time CV Reported Mon, 11/22/2021 12:29 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 11/22/2021 12:29 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. PO Thomas Gargiulo	22318	969085	123 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Anthony Corrao	03347	948814	123 PCT
2. SGT Kappa Farid	00467	925259	123 PCT
3. PO Akila Nanayakkara	26498	971161	123 PCT
4. PO Arniko Shrestha	30594	946556	123 PCT
5. PO Christopher Gilmore	05733	934930	123 PCT
6. PO Amy Vadala	05442	933434	123 PCT
7. PO Meraris Brito	25485	970998	123 PCT
8. PO John Latanzio	08320	963599	123 PCT

Officer(s)	Allegation	Investigator Recommendation
A. PO Thomas Gargiulo	Abuse: On November 3, 2021, Police Officer Thomas Gargiulo inappropriately touched § 87(2)(b)	§ 87(2)(b)
B. PO Thomas Gargiulo	Abuse: On November 4, 2021, Police Officer Thomas Gargiulo propositioned § 87(2)(b)	§ 87(2)(b)
C. PO Thomas Gargiulo	Abuse: On November 4, 2021, Police Officer Thomas Gargiulo threatened to use force against § 87(2)(b) while in the presence of § 87(2)(b)	§ 87(2)(b)

### Case Summary

On November 22, 2021, § 87(2)(b) called the CCRB and filed this complaint.

On November 3, 2021, at 6:30 PM, § 87(2)(b) was at home at § 87(2)(b) in Staten Island when she had a domestic dispute with her husband, § 87(2)(b) and a witness called the police. Police Officer Thomas Gargiulo, Police Officer Anthony Corrao, and additional officers from the 123rd Precinct, responded to the scene. PO Gargiulo prepared a domestic incident report (DIR) and then hugged § 87(2)(b) (**Allegation A – Abuse of Authority** – § 87(2)(g))

The following day, on November 4, 2021, PO Gargiulo called § 87(2)(b) and allegedly asked § 87(2)(b) to go out to eat and talk about the incident mentioned above. Later that day at approximately 8 PM, while off-duty, PO Gargiulo picked up § 87(2)(b) in his personal vehicle and they went to eat at Roll N Roaster located at 2901 Emmons Ave in Brooklyn (**Allegation B – Abuse of Authority** – § 87(2)(g)). On the drive back to § 87(2)(b) home, PO Gargiulo told her that if he ever saw § 87(2)(b) he would shoot him (**Allegation C – Abuse of Authority** – § 87(2)(g))

§ 87(2)(b) was arrested for assault with intent to cause injury, and intent to damage property as a result of the incident on November 3, 2021 (BR 06).

The CCRB received sixteen Body Worn Camera (BWC) video of the incident on November 3, 2021(IA 43-58). The investigation is not in possession of any additional video evidence.

### Findings and Recommendations

**Allegation (A) Abuse of Authority: On November 3, 2021, Police Officer THOMAS GARGIULO inappropriately touched § 87(2)(b)**

**Allegation (B) Abuse of Authority: On November 4, 2021, Police Officer THOMAS GARGIULO propositioned § 87(2)(b)**

**Allegation (C) Abuse of Authority: On November 4, 2021, Police Officer THOMAS GARGIULO threatened to use force against § 87(2)(b) while in the presence of § 87(2)(b)**

It is undisputed that on November 3, 2021, at 6:30 PM, § 87(2)(b) (BR 01) was at home at § 87(2)(b) in Staten Island when she had a verbal and physical dispute with her husband, § 87(2)(b) in which she sustained injuries, and a witness called the police. PO Gargiulo (BR 02), PO Corrao (BR 03), and additional officers from the 123rd Precinct, responded to the scene. § 87(2)(b) told PO Gargiulo what happened during her dispute with § 87(2)(b) and he prepared a DIR (BR 04) for the incident. He then hugged § 87(2)(b) for a few seconds. § 87(2)(b) stated that prior to PO Gargiulo hugging her, he turned off his BWC and told PO Corrao to do the same. § 87(2)(b) mother, § 87(2)(b) (BR 05), was present while PO Gargiulo prepared the DIR and hugged § 87(2)(b) PO Gargiulo and the other officers arrested § 87(2)(b) (BR 06) and transported him to the hospital because he was under the influence of drugs.

PO Gargiulo (BR 02) stated that he hugged § 87(2)(b) in a consoling manner because she seemed to be upset over the domestic dispute. PO Gargiulo stated that was not captured on BWC because he turned his BWC off after the DIR was finished. He believed this was a type of situation in which he had discretion to turn off his BWC because he was no longer taking police action.

It is undisputed that on November 3, 2021, after the domestic dispute, PO Gargiulo (BR 02) texted § 87(2)(b) (BR 01) from his department cell phone (BR 07), notifying her that § 87(2)(b) was still in the hospital and also requested additional contact information and photographs of § 87(2)(b) injuries and damaged property to add to the DIR. § 87(2)(b) provided him the requested information. On November 4, 2021, sometime in the

morning after 7 AM, § 87(2)(b) contacted PO Gargiulo on his department cell phone and they spoke over the phone about family court. PO Gargiulo had bad service on his department cell phone and contacted § 87(2)(b) on his personal cell phone. Later that day at approximately 8 PM, § 87(2)(b) and PO Gargiulo spoke over the phone and agreed to go out for dinner at Roll N Roaster. While off duty, PO Gargiulo picked § 87(2)(b) up in his personal vehicle. Originally, they were going to go to a chicken restaurant in New Jersey, however, they realized that it was closed so they drove to Roll N Roaster, had dinner, and PO Gargiulo drove § 87(2)(b) back home. PO Gargiulo had his personal firearm with him during the dinner and at a certain point they had a conversation about shooting firearms. They also spoke about § 87(2)(b) criminal case, family members involved in past domestic disputes, and dream travel destinations. The days following the dinner, PO Gargiulo and § 87(2)(b) had a Facetime call together and continued to text each other periodically. One day, PO Gargiulo mistakenly believed that he saw § 87(2)(b) in a Target and messaged her asking if she was there. After a few days of texting each other, § 87(2)(b) made is clear that she did not want PO Gargiulo to contact her anymore and they stopped all communication.

§ 87(2)(b) (BR 01) stated that PO Gargiulo originally called her from his personal cell phone and asked if she wanted to go out to eat so they could talk about the incident involving § 87(2)(b) and she agreed. During the dinner, PO Gargiulo disclosed details about his personal life to § 87(2)(b) and asked her questions about her personal life. During the drive back to her home, PO Gargiulo asked § 87(2)(b) for details about her personal life. § 87(2)(b) mentioned that she wanted to go to California and PO Gargiulo told her that he could move her and her daughter out to California. PO Gargiulo also told § 87(2)(b) that if he ever saw § 87(2)(b) that he would shoot him. PO Gargiulo dropped off § 87(2)(b) at her home and left. PO Gargiulo continued to text § 87(2)(b) periodically for the next few weeks until November 22, 2021.

While the investigation was unable to obtain evidence of the text messages between § 87(2)(b) and PO Gargiulo the days following the dinner, § 87(2)(b) (BR 01) read the text messages between her and PO Gargiulo during her CCRB interview. In the text messages, § 87(2)(b) told PO Gargiulo that she did not believe the dinner date or conversations they had were appropriate and asked him to stop contacting her. PO Gargiulo continued to contact her until November 22, 2021.

PO Gargiulo (BR 02) stated that when he spoke to § 87(2)(b) the discussion of going out to eat dinner came up, however he could not remember who originally suggested going to dinner. § 87(2)(b) spent the majority of the dinner talking about the domestic incident and what happened with § 87(2)(b). PO Gargiulo listened to her and consoled her the entire time. He mentioned that they had multiple conversations about their personal lives including family and future aspirations. PO Gargiulo then drove § 87(2)(b) to her friend's house and left. PO Gargiulo denied that he ever told § 87(2)(b) that he would use force against or shoot § 87(2)(b). PO Gargiulo further clarified that once § 87(2)(b) case went to the DA's office, he would not be aware of what was happening with it and could not assist § 87(2)(b) with that.

PO Gargiulo's BWC footage (BR 08) captures PO Gargiulo responding to the domestic incident call. Between 0:00 and 9:00, PO Gargiulo arrives to the scene, apprehends § 87(2)(b) with EMTs and they determine that he needs to go to the hospital because he is on drugs. Between 9:00 and 16:40, PO Gargiulo speaks to § 87(2)(b) about the domestic dispute. Between 16:40 and 36:00, PO Gargiulo goes to the ambulance that § 87(2)(b) is in and places him under arrest for domestic assault. Between 36:00 and 51:49, PO Gargiulo speaks to § 87(2)(b) and prepares a DIR. Neither PO Gargiulo's BWC or any other officers' BWC footage (IA 43-58) captured PO Gargiulo hugging § 87(2)(b).

There is no available footage for the incident on November 4, 2021, because PO Gargiulo was off-duty. The CCRB was unable to obtain or determine the existence of surveillance footage of the incident at Roll N Roaster (BR 09).

According to the Stop Sexual Harassment Act (BR 10) sexual harassment is any unwelcome verbal or physical behavior and can include unwanted touching. Sexual harassment is illegal in New York City.

Patrol Guide Procedure 200-02 (BR 11) states that officers are to treat everyone with compassion, courtesy, professionalism, respect, and respect the dignity of each individual while rendering police services. Officers must maintain a higher standard of integrity than is expected of others.

Patrol Guide Procedure 205-36 (BR 12) states that sexual harassment is unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature. Conduct which could be considered sexual harassment includes subtle or direct propositions, and any unnecessary or unwanted touching including but not limited to patting or pinching.

The NYPD Disciplinary Matrix (BR 13) defines a sexual proposition as any conduct or solicitation for the purpose of sexual gratification, or sexual abuse or any sexual behavior that a reasonable person would consider to be an abuse of authority (Footnote 57).

PO Gargiulo responded to a domestic incident of a sensitive nature in which § 87(2)(b) was the victim of physical violence and sustained injuries. After preparing the DIR, he hugged § 87(2)(b). While PO Gargiulo stated that he did this in a consoling manner, the hug was unsolicited by § 87(2)(b) inappropriate, and was done so without her consent. PO Gargiulo hugged § 87(2)(b) while he was performing law enforcement duties in uniform and with knowledge that she was a domestic violence victim. Furthermore, the hug served as a prelude to propositions made the day after the initial incident. § 87(2)(g)

The following day, PO Gargiulo and § 87(2)(b) went out to eat dinner. PO Gargiulo stated that he did not remember who originally suggested going out to eat dinner, however, regardless of who suggested it, he agreed to it despite only having met § 87(2)(b) when he responded to the domestic incident involving § 87(2)(b) as the victim. Additionally, he stated that he was unaware of any further development in § 87(2)(b) domestic incident case or § 87(2)(b) criminal case and was unable to assist her or inform her in regards. He had multiple conversations with § 87(2)(b) over dinner involving personal life topics unrelated to the domestic violence case or any law enforcement matters. § 87(2)(g)

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 14).
- Police Officer Thomas Gargiulo has been a member-of-service for two years and this is the first CCRB complaint to which he has been a subject.

#### **Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- As of April 26, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (BR 15).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(g)

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Squad: 16

Investigator:	<u>Edward Tsigel</u>	<u>Investigator Edward Tsigel</u>	<u>5/16/2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Patrick Yu</u>	<u>IM Patrick Yu</u>	<u>05/20/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date